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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of GINA and JOSEPH ANGELO.	
GINA ANGELO, Respondent, v. JOSEPH ANGELO, Appellant.	G028009 (Super. Ct. No. D319569) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Thomas H. Schulte, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

George M. Kornievsky for Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Mary Roth and Mary Dahlberg, Deputy Attorneys General, for Respondent.

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I

Gina Angelo initiated divorce proceedings in August 1990. In March 1991, in response to an order to show cause for pendente lite support, Joseph and Gina signed a stipulation providing that Joseph would pay $4,000 a month in family support for Gina and the couple's two boys, then about four and five years old. The parties reconciled in April 1993, and lived together as husband and wife for another three and one-half years, until November 1996, when they separated again. At that point Joseph began paying $1,750 a month to Gina. During the period of the reconciliation there was no dismissal of the dissolution action, nor modification of the existing pendente lite order.[1]

The question of whether Gina actually agreed to accept the $1,750 per month after the couple split up again is disputed (and in any event not before us). What is not disputed is that in 1998 she went to the Orange County District Attorney's office to seek enforcement of the existing support order. The office sought a writ of execution and a debtor's exam, which eventually prompted Joseph to file an order to show cause to vacate the pendente lite support order *nunc pro tunc* on the theory that the parties' reconciliation had the effect of nullifying the support order as a matter of law in 1993. He relied on two cases decided in the days when California had a system of interlocutory dissolution judgments followed by a waiting period before a final judgment could be entered: *People v.*

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[1] In *In re Marriage of Cordero* (2002) 95 Cal.App.4th 653, we recently had occasion to observe that when a couple tries to avoid legal fees by ignoring the need to obtain orders which reflect their current situation, they get what they pay for -- a "mess." (See *id*. at p. 659, fn. 5.) The comment was made sympathetically in that case, because the parties were people of limited means. Here, however, Joseph really cannot plead poverty for having failed either to (a) have the proceedings dismissed upon reconciliation or (b) at least obtain a modification of the earlier order. He is a lawyer, who would readily recognize the dangers of doing nothing in the face of a nonterminated pendente lite order. Then again, perhaps there is more here than merely another case of barefoot cobbler's kids. It may be, for aught we know, that the tenuous nature of the relationship between Gina and Joseph was such that Gina would not have consented to either dismissal or modification, and the inaction reflects the only course of action the parties could agree on.

Howard (1984) 36 Cal.3d 852, 857-858 [reconciliation after old interlocutory judgment with no final judgment nullified interlocutory judgment] and *In re Marriage of Modnick* (1983) 33 Cal.3d 897, 912 [same].

The trial judge concluded that Family Code section 3602, enacted after *Howard* and *Modnick*, operated only to "suspend" the pendente lite order during the period of the reconciliation, not nullify it altogether. The judge denied Angelo's motion, and this appeal followed in wake of the order.[2]

II

On the merits, there are three reasons the trial judge was correct in denying the order.

First, the plain text. Family Code section 3602 is incompatible with an interpretation of nullification upon reconciliation. The statute provides, in its entirety: "Unless the order specifies otherwise, an order made pursuant to this chapter [which allows for pendente lite support orders, see Family Code section 3600] is not enforceable during any period in which the parties have reconciled and are living together." If the Legislature had wanted to say that reconciliation causes an order to terminate by "operation of law," it could have said so, as it did in the previous section (Fam. Code, § 3601) in regard to specified contingencies affecting child support orders. Joseph makes no attempt in his brief to argue that

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[2] Both parties have overlooked the question of appealability. (See Cal. Rules of Court, rule 14(a)(2)(B) [appellant's brief must "state that the judgment appealed from is final, or explain why the order appealed from is appealable"].) The subject is worth a detour because the appealability of the order before us now is not necessarily clear on its face. The salient fact on this point is that the March 1991 order was a pendente lite support order. There has been, as yet, no termination of the dissolution action which began in August 1990, i.e., no final judgment. However, a pendente lite support order qualifies as appealable because it is a "typical example of a final judgment on a collateral matter." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 61, p. 117.) Because the pendente lite support order qualifies as a "final judgment" as to that collateral matter, the order after it qualifies as appealable as an order after an appealable judgment. (See Code Civ. Proc., § 904.1, subd. (a)(2).)

the actual language of the statute contemplates anything other than suspension of the order during a period of reconciliation.

Second, the legislative history. Joseph points to comments made by Assemblymember DeBow, author of 1986 Assembly Bill 4284, which became former Civil Code 4357, subdivision (b), the last sentence of which later became Family Code section 3602.[3] (See Stats. 1986, ch. 366.) The problem for Joseph, those comments, if anything, establish that the purpose behind the "not enforceable during any period" of reconciliation language was to *prevent* pendente lite orders from expiring after five years because the case had not yet come to trial.[4] The theory was that "poor people" who commence dissolutions might not have "the resources to complete the proceeding" and the new legislation would permit "the original pendente lite order to continue in effect until specifically dismissed by a court." In the meantime, the parties could use their order as an "existing framework" they could "work within." *That* sounds like just the opposite of an intention to enact a reconciliation-automatically-nullifies rule.

True, Assemblymember DeBow also made a reference to the codification of case law. ("This bill also codifies case law by stating that a child support order is not enforceable during any period in which the parties have reconciled and are living together.") But that reference cannot reasonably be read

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[3] It is well established that the author's comments don't count for anything in terms of legislative history. As the Supreme Court said just a few weeks ago: "As we frequently have observed, the expressions of individual legislators generally are an improper basis upon which to discern the intent of the entire Legislature." (*People v. Farell* (S092183, July 11, 2002), ___ Cal.4th ___, ___, citing *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 and *People v. Overstreet* (1986) 42 Cal.3d 891, 900.) We therefore could stop with our first reason, the unambiguous text of Family Code section 3602. However, since much of the focus of the appellant's argument is rooted in the author's comments, it bears observing that those comments actually support the trial court's decision.

[4] Former Civil Code section 4357 operated much like current Family Code section 3601, which is to provide that pendente lite for child support "remain in effect" until terminated by operation of law, even though not brought to trial within five years. The last sentence began with the "however" ("However, such an order is not enforceable . . . .") to make the point that, even though the five-year rule did not apply to obviate pendente lite child support orders, such orders would not be "enforceable" during any period of reconciliation.

for the proposition that the intention was to enact a rule that pendente lite orders automatically terminate by operation of law upon reconciliation. Remember that both *Howard* and *Modnick* were cases involving reconciliations after an interlocutory judgment of dissolution (a creature that doesn't exist anymore), not cases involving reconciliations after pendente lite orders.

Third, the change effected by the elimination of the former "two-step" procedure of having an interlocutory judgment followed by a final judgment. (Cf. Hogoboom & King, Cal. Practice Guide: Family Law (Rutter Group 2001) [¶] 15:284, p. 15-52.) The *Howard* and *Modnick* results were the necessary consequence of having a two-step procedure for what were, in substance, *permanent* orders, even though initially denominated "interlocutory." The idea of that procedure was, as *Howard* explained, to provide for a period of delay so as to *encourage* reconciliation. (*Howard, supra*, 36 Cal.3d at p. 858, fn. 9.) There is now no analog to the "interlocutory" decree, so there is no reason to expect that reconciliation after a pendente lite order would necessarily nullify that order.

We recognize, as Hogoboom and King state, that the general "rationale" of the *Howard* opinion "remains convincing." (See Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, [¶] 15:284, at p. 15-53.) That is, if a reconciliation signifies an intention by the parties to resume the legal relationship of husband and wife (see *Howard, supra*, 36 Cal.3d at pp. 856-857), then nullification of a pendente lite order is both consistent with that intention, and indeed facilitates it. And if the Legislature had actually said something in Family Code section 3602 about termination or nullification upon reconciliation, our decision today might be different.[5]

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[5] By the same token, it is irrelevant that the Supreme Court has never overruled *Howard* or *Modnick*. They were cases which, on the point, dealt with what is now an outdated statutory structure.

But it must also be remembered that suspension of an existing order *while a dissolution proceeding remains pending* is not inconsistent with the purposes of reconciliation, at least under those circumstances, either. After all, if the petitioner is not willing to go to the trouble of dismissing the petition, it is reasonable to assume that there is an element of tentativeness in the reconciliation. Joseph forgets that if a couple are *really* reconciled, one would naturally expect dissolution proceedings to be dismissed. The statutory language contemplating mere suspension of the enforceability of the pendente lite order actually captures the underlying human reality of the situation.

III

The order is affirmed. Respondent is to recover her costs on appeal.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

O'LEARY, J.